

Todd M. Friedman (216752)

Adrian R. Bacon (280332)

Law Offices of Todd M. Friedman, P.C.

21550 Oxnard St., Suite 780

Woodland Hills, CA 91367

Phone: 323-306-4234

Fax: 866-633-0228

tfriedman@toddfllaw.com

abacon@toddfllaw.com

Attorneys for Plaintiff, JOHN PARZIALE and all others similarly situated

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN PARZIALE, individually, and
on behalf of all others similarly
situated,

Plaintiff,

vs.

HP, INC. and DOES 1-10,

Defendant(s).

Case No.

CLASS ACTION COMPLAINT

- (1) Violation of Florida Deceptive and Unfair Trade Practices Act (F.S.A. §§ 501.201 *et seq.*) and
- (2) Violation of Florida Misleading Advertisement Law (F.S.A. §§ 817.41 *et seq.*)

Jury Trial Demanded

1 Plaintiff JOHN PARZIALE (“Plaintiff”), individually and on behalf of all
2 other members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant HP,
5 INC. (hereinafter “Defendant”) to stop Defendant’s practice of modifying and
6 corrupting Purchasers’ printers by forcing unauthorized changes to their firmware
7 and to obtain redress for all Purchasers Nationwide (“Class Members”) who,
8 within the applicable statute of limitations period, had their HP Printers modified
9 to stop recognizing and accepting third party ink cartridges.

10 2. Defendant is a Delaware corporation with its principal place of
11 business and headquarters in California and is engaged in the design, development,
12 manufacture, sale, and distribution of printers and related equipment and services
13 throughout the world with a large share of its business done in California.

14 3. On or around April 12, 2019, thousands of HP Printer owners in the
15 United States and other countries started experiencing problems and crashes with
16 their HP Printers, since said printers stopped recognizing and accepting third party
17 ink cartridges (i.e. ink cartridges which had not been manufactured by HP, Inc.
18 but were compatible with the HP Printers before April 12, 2019).

19 4. In an effort to dominate the ink cartridge marketplace, HP designed,
20 developed, wrote and distributed a firmware¹ update for HP Printers, including HP
21 Printers owned by Plaintiff and other members of the class.

22 5. HP forced firmware modifications to the HP Printers which were
23 specifically designed and programmed to reject, starting on April 12, 2019, all
24 third party ink cartridges, including any said third party ink cartridge which had
25 already been purchased and installed by Class Members and which were already
26

27 ¹ “Firmware” is generally defined as a software program installed into a hardware
28 device. Firmware provides the necessary instructions for how the device operates and
communicates with other computer hardware.

properly working in their HP Printers.

6. The Class Members were not informed by HP of this plan to program a rejection of third party ink cartridges. HP's goal was to disable the HP Printers, after their sale to Class Members, unless and until only new HP brand ink cartridges were installed, which cost approximately twice as much, in order for HP to greatly increase its profits to the detriment of Class Members.

7. Plaintiff and similarly situated Purchasers purchased printers that were represented as having certain features and capacities.

8. Plaintiff and similarly situated Purchasers relied on these representations when purchasing their printers.

9. When purchasing these printers, Plaintiff and similarly situated Purchasers desired and believed to have obtained printers with the capacity to use third party ink cartridges.

10. Plaintiff and similarly situated purchasers were not told at the time of purchase that their HP Printer would at some time in the future reject the less expensive third party replacement ink cartridges.

11. Furthermore, Plaintiff and similarly situated Purchasers were not informed by HP of the modifications in question and did not consent to HP unilaterally pushing such modifications into their HP Printer, rendering the printers unable to make, use, copy, scan, fax, or print documents, photographs, or other printable items and making the printers no longer what Plaintiff and similarly situated Purchasers had bargained for.

12. For these reasons and others, Plaintiff brings this class action complaint on behalf of himself and individuals similarly situated against Defendant for its illegal, deceptive, and unconscionable actions in violating the privacy rights of hundreds of thousands of individuals nationwide in order to obtain an unfair and illegal competitive advantage.

JURISDICTION AND VENUE

13. This class action is brought pursuant to Federal Rule of Civil Procedure 23.

14. Venue is proper in the United States District Court for the Northern District of California, in that Defendant's headquarters are located in Palo Alto California in the Northern District of California.

15. There is original federal subject matter jurisdiction over this matter pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb. 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the original jurisdiction of federal courts in any class action in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class is a citizen of a State different from the State of citizenship of any defendant, and the matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and costs.

16. In the case at bar, there are at least 100 members in the proposed Class, the total claims of the proposed Class members are in excess of \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiffs and the class are citizens throughout various States across the United States.

THE PARTIES

17. Plaintiff is a citizen and resident of Jacksonville, Florida.

18. Defendant HP, INC. is a Delaware corporation with its principal place of business and state of incorporation in California. Defendant conducts a large share of its business within California and in this judicial district.

19. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or is attributable to, Defendant and/or its employees, agents, and/or third parties acting on its behalf, each acting as the agent for the other, with legal authority to act on the other's

1 behalf. The acts of any and all of Defendant's employees, agents, and/or third
2 parties acting on its behalf, were in accordance with, and represent, the official
3 policy of Defendant.

4 20. Plaintiff is informed and believes, and thereon alleges, that Defendant
5 is intentionally, negligently, or otherwise responsible for the acts, omissions,
6 occurrences, and transactions of each and all its employees, agents, and/or third
7 parties acting on its behalf, in proximately causing the damages herein alleged.

8 21. At all relevant times, Defendant ratified each and every act or
9 omission complained of herein. At all relevant times, Defendant, aided and
10 abetted the acts and omissions as alleged herein.

11 **PLAINTIFF'S FACTS**

12 22. On or about September 12, 2017, Plaintiff purchased an HP Officejet
13 Pro 7740 printer from an Office Depot located at 5914 Ramona Blvd. Jacksonville,
14 Florida.

15 23. On June 6, 2018, Plaintiff purchased another HP Officejet Pro 7740
16 printer online at Amazon.com

17 24. In purchasing the printers, Plaintiff paid more than valuable
18 consideration. Including taxes and fees, Plaintiff paid \$213.99 for each printer.

19 25. When shopping for a printer, Plaintiff was looking for a printer that
20 had the most features including the ability to use 952-, 952XL-, 953-, and 953XL-
21 series ink cartridges.

22 26. Nowhere did Plaintiff see any representations by Defendant that
23 Plaintiff would only be able to use HP brand ink-cartridges. In addition, it was
24 common industry practice and all of the printers previously purchased by Plaintiff
25 allowed the use of third party ink cartridges. These representations and omissions
26 made Plaintiff believe that he could use 952-, 952XL-, 953-, and 953XL- ink
27 cartridges, including third party ink cartridges and refilled HP ink cartridges when
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1 purchasing the printer.

2 27. Plaintiff was aware that ink cartridges contributed to a significant cost
3 of the printer over its lifetime at the time of purchase. As a result, this was one of
4 the most significant features of the printer that Plaintiff was seeking when
5 examining the features of the printers and determining which printer to purchase.
6 In fact, Plaintiff did not purchase other printers, such as a Lexmark brand printer,
7 in favor of the HP Officejet Pro 7740 because of his belief that he could use third
8 party ink cartridges. Had Plaintiff known that he would be unable to use third party
9 ink cartridges, Plaintiff would have purchased a different printer.

10 28. Plaintiff began using the printer with the preinstalled HP ink
11 cartridge.

12 29. Over the life of the printer, Plaintiff used both HP ink cartridges and
13 third party ink cartridges.

14 30. On or about April 12, 2019, HP forced a firmware update onto
15 Plaintiff's 7740 printers. From that day forward, Plaintiff could not get third party
16 ink cartridges or refilled HP ink cartridges to work and was instead greeted with
17 an error message. When Plaintiff tried to use his HP Officejet Pro 7740 to make
18 black and white copies the printer would not operate until Plaintiff ensured that
19 every color ink cartridge was a new HP brand ink cartridge.

20 31. Upon learning this, Plaintiff felt ripped off, cheated, and violated by
21 Defendant.

22 32. Plaintiff never authorized Defendant to force this modification on him
23 in any way nor at any time.

24 33. Defendant manufactured, sold and modified Plaintiff's printer.

25 34. Such business tactics rely on falsities, deception and force against a
26 reasonable Purchaser.

27 35. Defendant expressly represented to Plaintiff, through written
28

1 statements, that Plaintiff's printer would have certain features and functioning.

2 36. When purchasing the printer, Plaintiff anticipated using both Original
3 HP-manufactured ink cartridges and third party ink cartridges, but soon discovered
4 (a) Original HP-manufactured ink cartridges were considerably more expensive
5 than third party cartridges; (b) third party ink cartridges produced printed matter
6 as good as or better than Original HP-manufactured ink cartridges; and (c) third
7 party ink cartridges appeared to last longer and produce more pages per cartridge
8 than Original HP-manufactured ink cartridges.

9 37. Plaintiff was under the impression that when purchasing the printer,
10 Plaintiff would be able to use third party ink cartridges and refilled HP ink
11 cartridges. When Plaintiff purchased the printer, almost every printer allowed the
12 use of third party ink cartridges and refilled name brand cartridges, so Plaintiff
13 reasonably believed that he would be able to use Original HP-manufactured ink
14 cartridges, third party remanufactured ink cartridges compatible with his HP
15 Officejet Pro 7740, and refilled HP ink cartridges (whether refilled by the Plaintiff
16 or by third parties). In fact, once the HP Officejet Pro 7740 printers were installed,
17 Plaintiff confirmed his pre-purchase assumptions by successfully using a variety
18 of compatible cartridge offerings. Defendant had made a material representation
19 to this effect by omitting the crucial fact that Defendant had intended to prevent
20 Plaintiff's use of a third party ink cartridge or a refilled HP ink cartridge in order
21 to obtain a substantial profit from Plaintiff.

22 38. It was Plaintiff's understanding at the time of purchasing the printer
23 that ink cartridges represent a large amount of the cost associated with the printers.

24 39. Plaintiff was also of the understanding that third party ink cartridges
25 and refilled brand name cartridges are often much cheaper than new HP brand ink
26 cartridges.

27 40. Plaintiff relied on Defendant's representations and omissions that
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1 Plaintiff would be able to purchase and use third party ink cartridges or refilled
2 brand name cartridges with his printers.

3 41. Plaintiff alleges that such representations and forced modifications
4 were part of a common scheme to mislead Purchasers, invade their privacy rights
5 and obtain an unfair competitive advantage against its business rivals in the current
6 marketplace.

7 42. Not only were such representations clearly false because the printer
8 was completely altered through the course of his use, but the forced modification
9 completely robbed Plaintiff of any use of third party ink cartridges or refilled HP
10 ink cartridges. In addition, the firmware update disabled all or most of Plaintiff's
11 HP printers' functionality, refusing to function until Plaintiff purchased and
12 installed Original HP-manufactured ink cartridges.

13 43. Plaintiff would not have purchased the printers if he knew that the
14 above-referenced statements made by Defendant were false and that Defendant
15 would forcibly control and modify his printers.

16 44. Defendant benefited from falsely advertising the features and
17 functions of the printer and from forcing unwanted and destructive modifications
18 on Plaintiff's and similarly situated Purchasers' Printers. Defendant benefited on
19 the loss to Plaintiff and provided nothing of benefit to Plaintiff in exchange.

20 45. Plaintiff is informed, believes, and based thereon alleges that
21 Defendant engaged in the exact same false misrepresentations and practices with
22 respect to all the HP Officejet Pro 7740 model printers like the one that Plaintiff
23 purchased. Hereafter, the following model printers shall be collectively referred
24 to as "Class Products:"

- 25 a. HP Officejet Pro 7720 All-in-One Printer;
- 26 b. HP Officejet Pro 7730 All-in-One Printer;
- 27 c. HP Officejet Pro 7740 All-in-One Printer;

- d. HP Officejet Pro 8210 All-in-One Printer;
- e. HP Officejet Pro 8216 All-in-One Printer;
- f. HP Officejet Pro 8218 All-in-One Printer;
- g. HP Officejet Pro 8700 All-in-One Printer;
- h. HP Officejet Pro 8710 All-in-One Printer;
- i. HP Officejet Pro 8714 All-in-One Printer;
- j. HP Officejet Pro 8715 All-in-One Printer;
- k. HP Officejet Pro 8716 All-in-One Printer;
- l. HP Officejet Pro 8717 All-in-One Printer;
- m. HP Officejet Pro 8718 All-in-One Printer;
- n. HP Officejet Pro 8719 All-in-One Printer;
- o. HP Officejet Pro 8720 All-in-One Printer;
- p. HP Officejet Pro 8724 All-in-One Printer;
- q. HP Officejet Pro 8725 All-in-One Printer;
- r. HP Officejet Pro 8726 All-in-One Printer;
- s. HP Officejet Pro 8727 All-in-One Printer;
- t. HP Officejet Pro 8728 All-in-One Printer;
- u. HP Officejet Pro 8730 All-in-One Printer;
- v. HP Officejet Pro 8732M All-in-One Printer;
- w. HP Officejet Pro 8734 All-in-One Printer;
- x. HP Officejet Pro 8735 All-in-One Printer;
- y. HP Officejet Pro 8736 All-in-One Printer;
- z. HP Officejet Pro 8740 All-in-One Printer;
- aa. HP Officejet Pro 8743 All-in-One Printer;
- bb. HP Officejet Pro 8744 All-in-One Printer;
- cc. HP Officejet Pro 8745 All-in-One Printer;
- dd. HP Officejet Pro 8746 All-in-One Printer;

1 ee. HP Officejet Pro 8747 All-in-One Printer;
2 ff. HP Officejet 7740 All-in-One Printer;
3 gg. HP Officejet 8702 All-in-One Printer;
4 hh. HP Officejet 8715 All-in-One Printer.

5 **CLASS ACTION ALLEGATIONS**

6 46. Plaintiff brings this action, on behalf of himself and all others
7 similarly situated, and thus, seeks class certification under Federal Rule of Civil
8 Procedure 23.

9 47. The class Plaintiff seeks to represent (the “Class”) is defined as
10 follows:

11 All United States Citizens who, between the applicable
12 statute of limitations and the present, had an HP Printer
13 that was modified to reject third party ink cartridges or
refilled HP ink cartridges.

14 48. As used herein, the term “Class Members” shall mean and refer to the
15 members of the Class described above.

16 49. Excluded from the Class are Defendant, its affiliates, employees,
17 agents, and attorneys, and the Court.

18 50. Plaintiff reserves the right to amend the Class, and to add additional
19 subclasses, if discovery and further investigation reveals such action is warranted.

20 51. Upon information and belief, the proposed class is composed of
21 thousands of persons. The members of the class are so numerous that joinder of
22 all members would be unfeasible and impractical.

23 52. No violations alleged in this complaint are contingent on any
24 individualized interaction of any kind between class members and Defendant.

25 53. Rather, all claims in this matter arise from the identical and
26 affirmative forced modifications.

27 54. There are common questions of law and fact as to the Class Members
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that predominate over questions affecting only individual members, including but not limited to:

- (a) Whether Defendant engaged in unlawful, unfair, or deceptive business practices in forcibly modifying Plaintiff and other Class Members printers;
- (b) Whether Defendant made misrepresentations with respect to the printers originally sold to Purchasers;
- (c) Whether Defendant profited from both the initial sale and use of the printer and the forced modification;
- (d) Whether Defendant violated F.S.A. §§ 501.201 *et seq.*, and F.S.A. §§ 817.41 *et seq.*
- (e) Whether Plaintiff and Class Members are entitled to equitable and/or injunctive relief;
- (f) Whether Defendant's unlawful, unfair, and/or deceptive practices harmed Plaintiff and Class Members; and
- (g) The method of calculation and extent of damages for Plaintiff and Class Members.

55. Plaintiff is a member of the class he seeks to represent

56. The claims of Plaintiff are not only typical of all class members, they are identical.

57. All claims of Plaintiff and the class are based on the exact same legal theories.

58. Plaintiff has no interest antagonistic to, or in conflict with, the class.

59. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member, because Plaintiff bought a printer from Defendant during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concerns the same business practices described herein irrespective of where they

1 occurred or were experiences. Plaintiff's claims are typical of all Class Members
2 as demonstrated herein.

3 60. Plaintiff will thoroughly and adequately protect the interests of the
4 class, having retained qualified and competent legal counsel to represent himself
5 and the class.

6 61. Common questions will predominate, and there will be no unusual
7 manageability issues.

8 **FIRST CAUSE OF ACTION**

9 **Violation of the Florida Deceptive and Unfair Trade Practices Act**

10 **(F.S.A §§ 501.201 *et seq.*)**

11 62. Plaintiff incorporates by reference each allegation set forth above.

12 63. Pursuant to Florida Deceptive and Unfair Trade Practices Act
13 ("FDUTPA"), §§ 501.201 *et seq.*, it is unlawful to engage in "unfair methods of
14 competition, unconscionable acts or practices, and unfair or deceptive acts or
15 practices in the conduct of any trade or commerce."

16 64. Defendant's conduct as alleged above violates the FDUTPA in that
17 Defendant misled Purchasers by making misrepresentations and untrue statements
18 about its printers, namely, Defendant sold printers advertised to include particular
19 features and functions and then forced modifications without their consent.

20 65. Defendant knew that their representations and omissions were untrue
21 and misleading, and deliberately made the aforementioned representations and
22 omissions in order to deceive reasonable Purchasers like Plaintiff and other Class
23 Members.

24 66. As a direct and proximate result of Defendant's misleading and false
25 advertising, Plaintiff and the other Class Members have suffered injury in fact and
26 have lost money and property. Plaintiff reasonably relied upon Defendant's
27 representations regarding the printers, namely that his printer would function in a
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1 particular way. In turn Plaintiff and other Class Members ended up with printers
2 that turned out be entirely different than advertised.

3 67. Defendant advertised to Plaintiff and other putative class members,
4 through written representations and omissions made by Defendant and its
5 employees, that its operating system would include particular features.

6 68. Defendant knew that the Printers did not in fact include the features
7 it was said to include.

8 69. Thus, Defendant knowingly sold Printers to Plaintiff and other
9 putative class members and then forcibly removed its originally advertised
10 features.

11 70. The misleading and false advertising described herein presents a
12 continuing threat to Plaintiff and the Class Members in that Defendant persists and
13 continues to engage in these practices, and will not cease doing so unless and until
14 forced to do so by this Court. Defendant's conduct will continue to cause
15 irreparable injury to Purchasers unless enjoined or restrained. Plaintiff is entitled
16 to preliminary and permanent injunctive relief ordering Defendant to cease their
17 false advertising and forced modification of property, as well as disgorgement and
18 restitution to Plaintiff and all Class Members Defendant's revenues associated
19 with their false advertising and forced modification of property, or such portion of
20 those revenues as the Court may find equitable.

21 **SECOND CAUSE OF ACTION**

22 **Violation of Florida Misleading Advertisement Law**

23 **(F.S.A §§ 817.41 *et seq.*)**

24 71. Plaintiff incorporates by reference each allegation set forth above.

25 72. Defendant's conduct as alleged above violates §§ 817.41(1), by
26 disseminating before the general public a misleading advertisement.

27 73. Defendant misled Purchasers by making misrepresentations and
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1 untrue statements about its printers, namely, Defendant sold printers advertised
2 to include particular features and functions and then forced modifications
3 without their consent.

4 74. Defendant knew that their representations and omissions were untrue
5 and misleading, and deliberately made the aforementioned representations and
6 omissions in order to deceive reasonable Purchasers like Plaintiff and other Class
7 Members.

8 75. As a direct and proximate result of Defendant's misleading and false
9 advertising, Plaintiff and the other Class Members have suffered injury in fact and
10 have lost money and property. Plaintiff reasonably relied upon Defendant's
11 representations regarding the printers, namely that his printer would function in a
12 particular way. In turn Plaintiff and other Class Members ended up with printers
13 that turned out be entirely different than advertised.

14 76. Defendant advertised to Plaintiff and other putative class members,
15 through written representations and omissions made by Defendant and its
16 employees, that its operating system would include particular features.

17 77. Defendant knew that the Printers did not in fact include the features
18 it was said to include.

19 78. Thus, Defendant knowingly sold Printers to Plaintiff and other
20 putative class members and then forcibly removed its originally advertised
21 features.

22 79. The misleading and false advertising described herein presents a
23 continuing threat to Plaintiff and the Class Members in that Defendant persists and
24 continues to engage in these practices, and will not cease doing so unless and until
25 forced to do so by this Court. Defendant's conduct will continue to cause
26 irreparable injury to Purchasers unless enjoined or restrained. Plaintiff is entitled
27 to preliminary and permanent injunctive relief ordering Defendant to cease their
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1 false advertising and forced modification of property, as well as disgorgement and
2 restitution to Plaintiff and all Class Members Defendant's revenues associated
3 with their false advertising and forced modification of property, or such portion of
4 those revenues as the Court may find equitable.

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6 **MISCELLANEOUS**

7 80. Plaintiff and Class Members allege that they have fully complied with
8 all contractual and other legal obligations and fully complied with all conditions
9 precedent to bringing this action or all such obligations or conditions are excused.

10 **REQUEST FOR JURY TRIAL**

11 81. Plaintiff requests a trial by jury as to all claims so triable.

12 **PRAYER FOR RELIEF**

13 82. Plaintiff, on behalf of himself and the Class, requests the following
14 relief:

- 15 (a) An order certifying the Class and appointing Plaintiff as
16 Representative of the Class;
- 17 (b) An order certifying the undersigned counsel as Class Counsel;
- 18 (c) An order requiring HP, INC., at its own cost, to notify all Class
19 Members of the unlawful and deceptive conduct herein;
- 20 (d) An order requiring HP, INC. to engage in corrective advertising
21 regarding the conduct discussed above;
- 22 (e) Actual damages suffered by Plaintiff and Class Members as
23 applicable or full restitution of all funds acquired from Plaintiff
24 and Class Members from the sale of misbranded Printers during
25 the relevant class period;
- 26 (f) Punitive damages, as allowable, in an amount determined by
27 the Court or jury;
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- (g) Any and all statutory enhanced damages;
- (h) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (i) Pre- and post-judgment interest; and
- (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: August 27, 2019

Respectfully submitted,

JOHN PARZIALE

By: /s Todd. M. Friedman

TODD M. FRIEDMAN, ESQ.

Attorney for Plaintiff John Parziale